

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SHAWN JAMES ALLEN WOODALL,

Plaintiff and Appellant,

v.

WILLIAM KOLENDER et al.,

Defendants and Respondents.

D054152

(Super. Ct. No. 37-2008-00076813-

CU-MC-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Barry Hammer, Judge. Affirmed.

Plaintiff and appellant Shawn James Allen Woodall, acting in propria persona, appeals from the trial court's judgment dismissing his amended complaint against defendants and respondents the Sheriff of San Diego County and several employees of the sheriff's department. We affirm.

While serving a one-year term in the custody of the sheriff's department, Woodall filed a civil rights complaint which alleged defendants prevented him from accessing the

courts, censored his mail, retaliated against him, and conspired against him in violation of his federal and state rights. After Woodall amended his complaint a number of times, defendants filed a demurrer, which the trial court sustained without leave to amend.

As we explain more fully below, none of Woodall's 24 causes of action state a cognizable claim under either federal or state law. Thus the trial court properly sustained the defendants' demurrer without leave to amend.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Woodall's Previous Litigation*

As the causes of action in Woodall's third amended complaint (TAC) and our discussion below rely heavily on litigation preceding the instant action, the following is a summary of Woodall's previous claims and their dispositions.¹

A. *2005 Habeas Petition in the U.S. District Court for the District of New Jersey*

In 2005, before his term in defendants' custody, Woodall was serving a 37-month term of imprisonment in Fort Dix, New Jersey, for alien smuggling. (See *Woodall v. Federal Bureau of Prisons* (3d Cir. 2005) 432 F.3d 235, 238 (*Woodall*).)

Upon Woodall's request, the sentencing court amended his sentence so he could spend his last six months of confinement in a halfway house. (*Woodall, supra*, 432 F.3d at p. 238.) After amendment of his sentence, however, the Bureau of Prisons (BOP)

¹ In reviewing a demurrer, we " ' "consider matters which may be judicially noticed." ' " (*Zelig v. City of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) This court is permitted to take judicial notice of: "Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States." (Evid. Code, § 452, subd. (d).)

enacted new regulations restricting the amount of time inmates could spend in community confinement to the lesser of six months or 10 percent of their sentence, which in Woodall's case would have amounted to only 11 weeks. (*Ibid.*)

Woodall filed a petition for habeas corpus in the United States District Court for the District of New Jersey challenging the BOP regulation. (*Woodall, supra*, 432 F.3d at p. 238.) Woodall argued an application of the BOP regulations to his case impermissibly ignored the recommendations of his sentencing court. (*Id.* at pp. 238-239.) The district court dismissed Woodall's petition. (*Id.* at p. 239.)

On December 15, 2005, the United States Court of Appeals for the Third Circuit vacated the district court's order. (*Woodall, supra*, 432 F.3d at p. 251.) The Third Circuit held the BOP regulation unlawful because it removed the sentencing court's discretion to consider the factors enumerated in 18 United States Code section 3621(b) regarding the placement and transfer of inmates. (*Ibid.*) The court remanded the case with instructions for the BOP to reevaluate Woodall's confinement in light of the section 3621 factors. (*Ibid.*) We have not located any record of what the BOP did following the Third Circuit's remand.

B. Actions Filed While in Defendant's Custody

On September 28, 2006, Woodall was convicted of sale of a controlled substance and sentenced to 365 days in the custody of the San Diego County Sheriff's Department. He remained in sheriff's custody until October 2007. Woodall filed several actions while in defendants' custody.

i. *Family Court Actions and Appeals to This Court*

On March 7, 2007, Woodall filed a petition for legal separation from his wife of four and a half months, Janice Teeter. (*In re Marriage of Woodall and Teeter* (Oct. 7, 2008, D051460 [nonpub. opn.].) On June 5, 2007, Woodall filed a motion for visitation rights of Teeter's three-year-old child pursuant to California Family Code section 3101, subdivision (a), which permits a court to grant reasonable visitation rights to a stepparent if it is in the best interests of the child. Woodall claimed he had been the child's de facto father for six months and wanted to maintain their father-daughter relationship. (*Id.* at p. 3.) Teeter objected to Woodall's requests for custody and visitation, claiming her daughter did not know Woodall as a father figure and that Woodall had spent approximately eight hours with the child during their marriage. (*Id.* at p. 5.)

On June 27, 2007, Woodall and Teeter participated in a mediation conference with Family Court Services, Woodall appearing telephonically from jail and Teeter in person. (*In re Marriage of Woodall and Teeter* (Oct. 7, 2008, D051460 [nonpub. opn.] at p. 5.) The Family Court Service mediator recommended Woodall's request for visitation rights be denied, finding Woodall had not had a sufficient opportunity to develop a bond with the child and that his criminal history and drug usage undermined his parenting abilities. (*Id.* at p. 7.)

On July 23, 2007, the trial court denied Woodall's motion for custody and visitation rights. (*In re Marriage of Woodall and Teeter* (Oct. 7, 2008, D051460

[nonpub. opn.] at p. 7.) The formal order filed on July 27, 2007, noted that Woodall had not appeared at the hearing. (*Ibid.*)

Woodall appealed the order denying his motion. In addition to arguing the trial court erred on the merits, Woodall also raised numerous due process claims concerning his right to be present at the hearing and receive the assistance of appointed counsel. (*Id.* at pp. 8-9.)

On October 7, 2008, this court affirmed the trial court's order, concluding the trial court had not abused its discretion in denying Woodall's motion for custody and visitation rights under section 3101 given the short duration of the marriage and Woodall's criminal history, incarceration and drug use. (*Id.* at pp. 10-13.) We also rejected Woodall's due process claims, concluding indigent inmates generally do not have a constitutional right to compel personal appearance in civil matters and thus, Woodall did not have a right to compel his appearance at the family court hearing. (*Id.* at p. 10, citing *Payne v. Superior Court* (1976) 17 Cal.3d 908, 913, 923, 926-927.) We also concluded Penal Code section 2526 did not provide Woodall with a right to appear because he was not faced with termination of his parental rights. Notwithstanding the fact Woodall did not have a right to compel his appearance, we found alternative means had been devised to provide Woodall with meaningful access to the court, including the assistance of a mediator and a telephonic appearance. (*Id.* at pp. 10-12.)

While the appeal was pending in the custody case, a trial date was set for March 18, 2008, for the dissolution of Woodall and Teeter's marriage. (*In re Marriage of Woodall and Teeter* (Mar. 24, 2009, D052904) [nonpub opn.] at p. 6.) Woodall requested

the court postpone trial until his release from prison, or alternatively, order defendants to produce him for the trial. (*Ibid.*) The trial proceeded as scheduled. Woodall did not appear and the court entered a judgment of dissolution. (*Ibid.*)

Woodall filed a notice of appeal, claiming the trial court erred in refusing to produce him for the March 18, 2008, trial date and essentially raising the same due process and child visitation/custody issues that were raised and rejected in his custody appeal. (*Id.* at p. 6.) This court concluded Woodall did not have a constitutional right to appear at the March 18, 2008, hearing because the hearing did not involve a "bona fide threat" to his personal or property interests or a termination of his parental rights. (*Id.* at p. 8, citing *Wantuch v. Davis* (1995) 32 Cal.App.4th 786 (*Wantuch*); Pen. Code, § 2625, subds. (b), (d), (e).) With respect to Woodall's custody and visitation issues, we concluded Woodall was not entitled to a "second bite of the apple" to challenge our previous disposition of these issues. (*Id.* at p. 9.)

ii. *2007 Habeas Petition to the United States District Court for the Southern District of California*

In addition to his family court actions, Woodall also filed a federal habeas petition while in defendants' custody.

On August 20, 2007, Woodall filed a habeas petition in the United States District Court for the Southern District of California seeking relief for defendants' refusal to provide him with pen, paper, photocopies, and postage. (*Woodall v. Kolender* (S.D. Cal. 2007) case No. 07-CV-1583 [2007 WL2406901].) The court denied Woodall's petition, finding the claim challenged Woodall's conditions of confinement and thus habeas review

did not lie. The court further noted that if Woodall intended to re-file the claim as a 1983 action, he would not be permitted to proceed in forma pauperis in federal court absent an allegation of grave danger. Under 28 United States Code section 1915, subdivision (g), a prisoner's right to proceed in forma pauperis may be limited if the prisoner suffers three "strikes" or complaints found to be frivolous or malicious or fail to state a claim. The federal district court found Woodall had three strikes and so would be required to pay filing fees for any subsequent actions. (*Ibid.*)

2. The Instant Civil Rights Complaint

Following his release from defendants' custody, on January 28, 2008, Woodall filed a civil rights complaint against San Diego County Sheriff William Kolender and several other employees of the sheriff's department. (42 U.S.C. § 1983.) On April 7, 2008, Woodall filed an amended complaint. On May 29, 2008, defendants filed a demurrer to the amended complaint, which the trial court sustained with leave to amend.

On September 4, 2008, Woodall filed the TAC. The TAC consisted of 14 causes of action and alleged violations of Woodall's federal and state rights. Woodall claimed defendants violated his right of access to the family court and federal court by refusing to provide him with paper, pen, photocopies, and postage and for failing to bring him to a scheduled court hearing. Woodall also claimed defendants violated his rights by reading his mail, operating an inadequate law library and failing to provide him sufficient time in the library. Lastly, Woodall claimed defendants retaliated against him by ignoring his administrative grievances, reading his mail, and refusing to provide him with a pen, paper, photocopies, and postage.

On September 23, 2008, defendants filed a demurrer to Woodall's TAC.

Defendants argued a prisoner has no constitutional right to access the courts to litigate civil cases and the state statutory and constitutional provisions cited in Woodall's TAC failed to create a cognizable cause of action.

On October 17, 2008, the trial court sustained defendants' demurrer to Woodall's TAC. The court found neither state nor federal law created a cognizable claim and that it did not appear Woodall would be able to amend the complaint to plead a cognizable cause of action. Accordingly, the trial court sustained the demurrer without leave to amend and a judgment of dismissal was entered.

On November 14, 2008, Woodall filed a notice of appeal.

DISCUSSION

Woodall claims the trial court erred in sustaining defendants' demurrer without leave to amend. Woodall argues it is well established that prisoners retain the right to meaningful access to civil court and thus, the allegations contained in his TAC constitute cognizable claims.

I

Standard of Review

"On review of an order sustaining a demurrer without leave to amend, our standard of review is de novo, 'i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law.' [Citation.]" (*Santa Teresa Citizen Action Group v. State Energy Resources Conservation & Development Com.* (2003) 105 Cal.App.4th 1441, 1445.) " "We treat the demurrer as admitting all material

facts properly pleaded, but not contentions, deductions or conclusions of fact or law.

[Citation.] . . . " ' ' " (*Zelig v. County of Los Angeles, supra*, 27 Cal.4th at p. 1126.)

Additionally, "when [a demurrer] is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment; if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff. [Citation.]" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Woodall's federal claims can be summarized as follows: a violation of his right to access family court, a violation of his right to access the federal courts, a violation of his First Amendment right to free speech, a First Amendment retaliation claim, and conspiracy claims.² Woodall also alleges defendants violated his rights under Penal Code sections 2601 and 2605, Family Code section 3101, and article 1, section 7(a) of the California Constitution. As discussed more fully below, Woodall fails to allege any cognizable federal or state claim.

² In his opening brief, Woodall repeatedly states that the trial court determined that while he did have a constitutional right to access the courts, the claim was dismissed because money damages were not available. Our review of the record discloses no such determination. We note that on June 30, 2008, the date on which Woodall alleges this trial court ruling occurred, the court merely sustained with leave to amend defendants' demurrer. Moreover, this contention is not relevant to any issue before us.

II

Section 1983 Review

Where a complaint alleges a violation of federal civil rights pursuant to 42 United States Code section 1983, we apply federal law to determine whether the complaint pleads a cause of action. (*Bach v. County of Butte* (1983) 147 Cal.App.3d 554, 563.) Under federal law, a section 1983 complaint prepared by a pro se litigant is held "to less stringent standards than formal pleadings drafted by lawyers." (*Haines v. Kerner* (1972) 404 U.S. 519, 520 [92 S.Ct. 594].) Dismissal of such complaints is proper "only if it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." (*Broughton v. Cutter Laboratories* (9th Cir. 1980) 622 F.2d 458, 460.) However, the court may not "supply essential elements of the claim that were not initially pled." (*Ivey v. Board of Regents of University of Alaska* (9th Cir. 1982) 673 F.2d 266, 268.)

To state a claim under section 1983, a plaintiff must allege: (1) "the violation of a right secured by the Constitution and laws of the United States," and (2) "that the alleged deprivation was committed by a person acting under color of state law." (*See West v. Atkins* (1988) 487 U.S. 42, 48 [108 S.Ct. 2250].)

III

An Inmate's Right to Access the Courts

One of the well-established rights secured by the Constitution is an inmate's right to access the courts. (*Lewis v. Casey* (1996) 518 U.S. 343, 350 [116 S.Ct. 2174] (*Lewis*).) In *Bounds v. Smith* the United States Supreme Court held an indigent inmate's

constitutional right to access the courts placed an affirmative duty on prisons to provide, at the state's expense, inmates with paper and pens to draft legal documents and postage to mail them. (*Bounds v. Smith* (1977) 420 U.S. 817, 824-825 [97 S.Ct. 1491] (*Bounds*).) Additionally, this right required prisons to "assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." (*Id.* at p. 826, fn. omitted.)

In *Lewis* the United States Supreme Court clarified its holding in *Bounds*. There, the court held " 'meaningful access to the courts is the touchstone.' " (*Lewis, supra*, 518 U.S. at p. 351.) The course of conduct mandated in *Bounds*, i.e. providing a prison law library or legal assistance programs, was "merely 'one constitutionally acceptable method to assure meaningful access to the courts' " and did " 'not foreclose alternative means to achieve that goal.' " (*Ibid.*) Thus, while prisons were constitutionally required to provide inmates with meaningful access to the courts, they were not required to do so in any particular manner. (See *id.* at p. 352.)

Lewis also required an inmate alleging denial of meaningful access to the courts to show that the prison's conduct caused him "actual injury," or " 'actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing deadline or to present a claim.' " (*Lewis, supra*, 518 U.S. at p. 349.)

Finally, the court in *Lewis* explained that *Bounds* did not "guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims." (518 U.S. at p. 354.) In other words, the Constitution does not require prisons enable its inmates to "*discover*

grievances" or "to *litigate effectively* once in court." (*Ibid.*) Importantly, an inmate's right of meaningful access to courts was limited to three types of claims: direct appeals, habeas petitions, or actions under 42 United States Code section 1983 challenging conditions of confinement. (*Ibid.*) "Impairment of any *other* litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." (*Id.* at p. 355.)

IV

Woodall Fails to State a Claim He Was Denied Access to Family Court

Woodall claims defendants violated his constitutional right of access to the family court division of the Superior Court of San Diego County by failing to provide him with pens, paper, postage, and photocopies, operating an inadequate library, and by giving him insufficient time in the law library. Woodall claims defendants prevented him from complying with the rules of court in filing a motion for legal separation from his wife and a motion for custody and visitation rights of his wife's daughter. Woodall also claims defendants illegally prevented him from appearing at a family court hearing on his motion for custody and visitation rights.

As we have noted, an inmate's constitutional right to access the courts is limited to direct appeals, habeas petitions and claims challenging conditions of confinement. (*Lewis, supra*, 518 U.S. at p. 354.) Nevertheless, courts have been encouraged to devise alternative means to secure inmates meaningful access to the courts where the inmate "is both indigent and a party to a bona fide civil action threatening his or her personal or property interests." (*Wantuch, supra*, 32 Cal.App.4th at p. 792.) This is true, for

instance, where an inmate's parental rights are threatened. (*Id.* at p. 794, citing Pen. Code, § 2625.)

Here, Woodall's petition for legal separation and motion for visitation and custody were not direct appeals, habeas petitions or challenges to the conditions of his confinement. Furthermore, Woodall was not faced with any threats to his personal, property, or parental interests. While Woodall was in effect attempting to *create* parental rights for his ex-wife's daughter, the family court hearing did not threaten to terminate any *existing* parental rights. Defendants were therefore not constitutionally obligated to provide Woodall with meaningful access, i.e. pen, paper, postage, photocopies, an adequate law library, or adequate time in the law library to assist in litigating these claims. Woodall's impairment of access to family court was simply an "incidental (and perfectly constitutional) consequence of conviction and incarceration" and Woodall is unable to state a cognizable constitutional claim based on defendants' conduct. (See *Lewis, supra*, 518 U.S. at p. 355.)

Furthermore, Woodall's claim pertaining to his right to appear at the family court hearing has already twice been rejected by this court. (See *In re Marriage of Woodall and Teeter* (Oct. 7, 2008, D051460); *In re Marriage of Woodall and Teeter* (Mar. 24, 2009, D052904).) The doctrine of collateral estoppel precludes the " 'relitigation of issues argued and decided in prior proceedings.' " (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896.) In short, Woodall's claims with respect to access to the family court do not implicate any federal constitutional right and have twice been rejected on the merits. Thus the trial court did not err in rejecting them here.

Woodall Fails to State a Claim He Was Denied Access to Federal Court

Woodall alleges defendants violated his right to access to the United States District Court by refusing to provide him with a pen, paper, postage, and photocopies, operating an inadequate library, giving him insufficient time in the library, and reading and censoring his mail. Woodall claims that as a result of defendants' conduct, he was unable to properly file a civil rights complaint before the statute of limitations expired.

Where, as here, a plaintiff asserts a backward-looking denial of access claim, or one that seeks a remedy for a lost opportunity to present a legal claim, a plaintiff must allege three elements: (1) loss of a "nonfrivolous" or "arguable" underlying claim; (2) official acts frustrating the litigation; and (3) a remedy that may be awarded as recompense but that is not otherwise available in a future suit. (See *Christopher v. Harbury* (2002) 536 U.S. 402, 413-414 [122 S.Ct. 2179] (*Harbury*).)

The first element relates to the "actual injury" of a right to access claim, " 'such as the inability to meet a filing deadline or to present a claim.' " (*Lewis, supra*, 518 U.S. at p. 348.) While a plaintiff need not show the claim, if presented, would have been successful on the merits (*Allen v. Sakai* (9th Cir. 1994) 48 F.3d 1082, 1085), the claim must be sufficiently described to show that it is " 'nonfrivolous' " or " 'arguable.' " (*Harbury, supra*, 536 U.S. at p. 415.)

First, we note Woodall has not alleged, and we have not been able to otherwise discover, what relief he received from the BOP on remand. Thus the TAC does not fully allege that he was in fact harmed by the BOP's initial ruling on his request for half-way

house confinement on his alien smuggling conviction. On remand the BOP may have again decided that Woodall was not entitled to half-way house confinement.

Secondly, Woodall's access to court claim relates to his 2005 habeas petition, filed while he was incarcerated in New Jersey. On December 15, 2005, the Third Circuit vacated the district court's dismissal of Woodall's habeas petition. Woodall claims that as of this date, he had two years in which to file a civil rights complaint against the BOP before the applicable statute of limitations expired. Once in defendants' custody on September 28, 2006, Woodall claims defendants prevented him from filing this claim in compliance with the rules of court and as a result, he missed filing the claim within the two-year limit.

Woodall's statute of limitations calculation is incorrect. Under California law, which dictates the applicable statute of limitations, a plaintiff has two years in which to file a section 1983 claim. (See *Jones v. Blanas* (9th Cir. 2004) 393 F.3d 918, 927, citing Code Civ. Proc., § 335.1.) Additionally, the statute of limitations is tolled while a person is incarcerated. (Code Civ. Proc., §352.1.) Thus, Woodall had at least until one year after he was released from defendants' custody to file his civil rights complaint against the BOP.

In sum, Woodall has failed to state a claim for violation of his constitutional right to access to courts because he has not alleged that any underlying claim exists or that the time in which to bring such a claim expired while he was in defendants' custody.

VI

An Inmate's Right to Free Speech

Woodall claims defendants violated his right to free speech by improperly reading and censoring his legal mail to determine the appropriate filing court.

While inmates enjoy a First Amendment right to send and receive mail (*Witherow v. Paff* (9th Cir. 1995) 52 F.3d 264, 265, citing *Thornburgh v. Abbott* (1989) 490 U.S. 401, 407 [109 S.Ct. 1874]) (*Thornburgh*)), a prison may restrict an inmate's First Amendment rights by means which are " 'reasonably related to legitimate penological interests.' " (See *Turner v. Safley* (1987) 482 U.S. 78, 89 [107 S.Ct. 2254] (*Turner*).) The *Turner* standard applies to prison regulation of incoming mail and correspondence among inmates. (*Thornburgh, supra*, 490 U.S. at p. 413.)

An inmate's outgoing mail poses a risk of a "categorically lesser magnitude" to prison order and security than incoming mail. (*Thornburgh, supra*, 490 U.S. at p. 413.) As such, a prison's regulation of outgoing mail is held to a heightened standard of review than the *Turner* reasonableness standard. (*Procunier v. Martinez* (1974) 416 U.S. 396, 413 [94 S.Ct. 1800] (*Procunier*), overruled by *Thornburgh, supra*, 490 U.S. at pp. 413-414, only as related to incoming mail.) A prison may censor an inmate's outgoing mail only if: (1) the regulation or practice in question furthers one or more of the substantial government interests of security, order and rehabilitation; and (2) the limitation on First Amendment freedoms is no greater than necessary to further the particular government interest involved. (*Procunier, supra*, 416 U.S. at p. 413.)

Defendants' brief visual inspection of Woodall's court pleadings does not constitute the "censorship" regulated by *Procunier*. As Woodall concedes, defendants looked at the pleadings only to determine the appropriate filing court. Woodall does not allege, for instance, that defendants altered his pleadings or prevented his pleadings from arriving at the courts. As an inmate's "freedom from censorship is not equivalent to freedom from inspection or perusal" (*Wolff v. McDonnell* (1974) 418 U.S. 539, 576 [94 S.Ct. 2963]), Woodall's TAC fails to state a First Amendment claim.

VII

Retaliation

Woodall claims defendants retaliated against him in response to his previous attempts to access the courts and complaints against staff by limiting his time in the prison law library, refusing to file or answer his administrative appeals, screening his mail, and refusing to provide him with pen, paper, photocopies, and postage to mail his court pleadings.

"Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal." (*Rhodes v. Robinson* (9th Cir. 2005) 408 F.3d 559, 567-568, fn. omitted.) A chilling effect on the inmate's right to file prison grievances may suffice to state a retaliation claim. (*Hines v. Gomez* (9th Cir. 1997) 108

F.3d 265, 269, citing *Sandin v. Conner* (1995) 515 U.S. 472, 477, fn. 11 [115 S.Ct. 2293].)

Although Woodall identifies defendants' alleged retaliatory conduct, he fails to allege how this conduct had a chilling effect on his right to free speech. As indicated above, defendants did not violate his right to free speech by unlawfully denying him access to court. Similarly, Woodall has not alleged a chilling effect on his right to file prison grievances. Notwithstanding that "inmates lack a separate constitutional entitlement to a specific grievance procedure," (*Ramirez v. Galaza* (9th Cir. 2003) 334 F.3d 850, 860) Woodall admits that defendants ultimately responded to his internal appeals as not raising "a grievable matter." That defendants did not respond in the manner desired by Woodall does not give rise to a First Amendment retaliation claim.

VIII

Conspiracy

Woodall claims defendants conspired to deprive him of his constitutional rights.

"To state a claim for conspiracy to violate one's constitutional rights under section 1983, the plaintiff must state specific facts to support the existence of the claimed conspiracy." (*Burns v. County of King* (9th Cir. 1989) 883 F.2d 819, 821.) A plaintiff can meet this standard by alleging which defendants conspired, how they conspired, and how the conspiracy led to a deprivation of constitutional rights. (*Harris v. Roderick* (8th Cir. 1997) 126 F.3d 1189, 1195-1196.) Conclusory allegations are insufficient to state a claim. (See *ibid.*)

Here, Woodall's allegations do not include any specific facts in support of the claimed conspiracy. Woodall merely claims repeatedly that "[defendants] conspired with each other" to deprive Woodall of his constitutional rights. These statements are conclusory and insufficient to state a conspiracy claim.

IX

State Law Claims

Penal Code section 2601, subdivision (d), affords an inmate the express statutory right to initiate civil actions. To give this statutory right meaning, an inmate also retains the right to meaningful access to the courts to prosecute a civil action. (*Apollo v. Gyaami* (2008) 167 Cal.App.4th 1468, 1483, citing *Wantuch, supra*, 32 Cal.App.4th at p. 792.)

Accordingly, an inmate may not be deprived, by his or her inmate status, of meaningful access to the civil courts if the prisoner is both an indigent and a party to a bona fide civil action threatening his or her personal or property interests. (*Wantuch, supra*, 32 Cal.App.4th at p. 792.)

Penal Code section 2625, subdivision (d), affords an inmate an absolute right to appear at specific family court hearings: to declare a child free from the custody and control of a parent (Fam. Code, §§ 7800-7895); to terminate parental rights or declare guardianship of a child adjudged a ward of the state (Fam. Code, § 366.26); and to adjudge a child a dependent of the court following parental abuse or neglect (Fam. Code, § 300, subds. (a)-(f), (i), (j)).

Family Code section 3101 permits a court to grant reasonable visitation rights to a stepparent, if such rights are in the best interests of the child.

Article I, section 7(a) of the California Constitution provides "[a] person may not be deprived of life, liberty, or property without due process of law."

Woodall fails to state a claim under section 2601. This court has twice concluded that he *was* provided with access to the courts. (See *In re Marriage of Woodall and Teeter* (2008) case No. D051460; *In re Marriage of Woodall and Teeter* (2009) case No. D52904.) The right to meaningful access "does not necessarily mandate a particular remedy to secure access." (*Wantuch, supra*, 32 Cal.App.4th at p. 792 (internal quotation omitted).) That defendants did not permit Woodall to access the family court in the particular manner he desired does not state a claim under section 2601, subdivision (d). Woodall's claim he was denied access to the federal courts also fails to state a claim under state law, as Woodall has failed to allege he suffered an actual injury from defendants' actions. (*Lewis, supra*, 518 U.S. at p. 349.)

Woodall did not have the right under Penal Code section 2625 to appear at the family court hearing because the circumstances enumerated in section 2625 did not apply to Woodall's case. Woodall sought to attend a hearing on his motion for custody and visitation rights of his ex-wife's daughter. This hearing did not relate to termination of his parental rights or to adjudge the child as a dependent of the court. As such, Woodall has not stated a claim for a violation of section 2625.

Woodall cannot claim that any action by defendants, employees of the San Diego County Sheriff's Department, violated his rights under Family Code section 3101 because this section permits a *court* to grant visitation rights to a stepparent when in the best interests of a child. Furthermore, this court has already addressed the application of this

provision to Woodall's visitation rights as a stepparent. In *In re Marriage of Woodall and Teeter*, case No. D051460, where Woodall appealed the trial court's denial of his section 3101 motion, this court concluded that given the short duration of Woodall's marriage, his criminal history, incarceration and drug usage, the trial court did not err in denying Woodall stepparent visitation rights. Woodall has failed to state a claim under section 3101.

Lastly, as Woodall has failed to state a cognizable claim for a violation of any of his rights, article I, section 7(a) of the California Constitution does not provide Woodall with a cause of action.

CONCLUSION

For the foregoing reasons, the trial court did not err in sustaining defendants' demurrer to Woodall's TAC without leave to amend. Judgment affirmed.

BENKE, J.

WE CONCUR:

McCONNELL, P. J.

McINTYRE, J.